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Fourth Amendment Application to the Mass Welfare Search

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FOURTH AMENDMENT APPLICATION TO THE MASS WELFARE SEARCH

Early Sunday morning, January 13, 1963, seventy-five social welfare workers from the Alameda County Welfare Department made an unannounced "raid" on the homes of 417 Aid to Needy Children (ANC) recipients.[1] The principal purpose of this "raid," described as "Operation Weekend," was the detection of welfare fraud, which, in this case, consisted of unreported or unauthorized men living in the homes of mothers receiving ANC grants.[2]

"Operation Weekend" was carried out in dragnet fashion. The welfare worker known to the recipient went to the front door, and a second worker went to the rear entrance to prevent the escape of any unauthorized males. After knocking, the welfare worker identified himself, explained his purpose, and asked for admittance.[3] Once admitted, he went to the rear of the dwelling and admitted his partner, whereupon they conducted a thorough search of the house. This type of search generally included "looking in and under the beds,"[4] as well as "looking in closets, drawers, attics, medicine chests, children's bedrooms,"[5] searching not only for a man but for evidence of his living there.

Depending on the evidence found, several courses of action were available. If the evidence disclosed a clear case of welfare fraud, which in California may be punishable as grand theft,[6] the case would be referred to the district attorney for possible prosecution. If the evidence was less incriminating, and a clear case of welfare fraud was not disclosed, the evidence could still be used as grounds for discontinuing or reducing the aid grant.[7]

One Alameda County welfare worker, Benny Max Parrish, refused to participate in "Operation Weekend" for the reason that he believed the searches violated the constitutional rights of the welfare recipients.[8] As a result of his refusal he was

[1] Out of the 417 cases investigated, 265 were found in order and 152 required additional investigation. Of these requiring further investigation, 92 had been chosen from "suspect" cases and 60 from cases chosen at random. In a total of 20 cases aid was discontinued. Alameda County Welfare Dep't, Statistical Summary Operation Weekend, Jan. 13, 1963.

[2] Parrish v. Civil Serv. Comm'n, 242 A.C.A. 665, 667, 51 Cal. Rptr. 589, 591 (1966), *appeal argued*, SF 22429, Cal. Sup. Ct., Dec. 5, 1966. The types of welfare fraud fall into three catagories: (1) the presence of an unreported man in the home, including an absent father, (2) the failure to report income, and (3) receiving aid for children who were not in the home or who were otherwise ineligible for public assistance. Reichert, *Relationships Between Welfare and Law Enforcement Agencies in California*, in CAL. WELFARE STUDY COMM'N CONSULTANTS' REPORTS, pt. II, App. F at 281 (1963).

[3] Parrish v. Civil Serv. Comm'n, *supra* note 2, at 668, 51 Cal. Rptr. at 592.

[4] *Id.* at 669, 51 Cal. Rptr. at 592.

[5] Reichert, *supra* note 2, at 300.

[6] People v. Shirley, 55 Cal. 2d 521, 11 Cal. Rptr. 537, 360 P.2d 33 (1961); People v. Phipps, 191 Cal. App. 2d 448, 12 Cal. Rptr. 681 (1961).

[7] Alameda County Welfare Dep't, *supra* note 1. For a complete compilation of statistics for each county concerning convictions for welfare fraud and discontinuances of aid in California see Cal. Dep't Social Welfare, Recipient Fraud Report, Research and Statistics, July 1964.

[8] Mr. Parrish contended that the mass visitations were degrading, were based on the presumption of the guilt of the recipients, were violative of their right to privacy, were

discharged. On appeal of his suit for reinstatement, a California District Court of Appeal held that he had not been asked to violate the constitutional rights of welfare recipients,[9] and thus affirmed his discharge.

The critical question to be considered is whether this type of mass welfare search is legal in light of the fourth amendment's prohibitions of unreasonable searches and seizures.[10]

Protections of the Fourth Amendment

The fourth amendment provides:

> The right of the people to be secure in their persons, papers, and effects, against unreasonable searches and seizures shall not be violated, and no Warrants shall issue, but on probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The basic purpose of this amendment is to secure the individual's right to privacy from unreasonable or arbitrary governmental intrusion into his home and personal effects.[11] Both the United States Supreme Court and the California supreme court have stressed the importance of this right by granting it protection.[12] Furthermore, the fundamental rights of the fourth amendment apply to the states through the due process clause of the fourteenth amendment.[13]

The protections of the fourth amendment, including its safeguard of individual privacy in the home, are secured by the express requirement that a valid search warrant based on "probable cause"[14] be issued. Traditionally, this warrant must

not required under his job classification, and were inconsistent with his training and the rehabilitative goals of the ANC program. Parrish v. Civil Serv. Comm'n, 242 A.C.A. 665, 667, 51 Cal. Rptr. 589, 591 (1966), *appeal argued*, SF 22429, Cal. Sup. Ct., Dec. 5, 1966. The *Parrish* case involves two important questions. First, there is the broad question of whether mass welfare searches, as conducted in "Operation Weekend," are reasonable within the fourth amendment. Scond, there is the question of whether Parrish could base his suit for reinstatement upon violation of the constitutional rights of others. Then, should this question be answered affirmatively, it must be determined whether it would be premature for Parrish to contend, prior to the searches, that they could not possibly be undertaken without violation of the fourth amendment rights of the welfare recipients. This note is limited to a discussion of the validity of the mass welfare search under the fourth amendment. No attempt will be made to resolve the merits of Parrish's suit for reinstatement.

[9] Parrish v. Civil Serv. Comm'n, *supra* note 8, at 674, 51 Cal. Rptr. at 596.

[10] See generally Reichert, *supra* note 2; Reich, *Midnight Welfare Searches and the Social Security Act*, 72 YALE L.J. 1347 (1963); tenBroek, *California's Dual System of Family Law: Its Origin, Development, and Present Status*, 17 STAN. L. REV. 614, 662-71 (1965).

[11] *E.g.*, Mapp v. Ohio, 367 U.S. 643, 655 (1961); Silverman v. United States, 365 U.S. 505, 511 (1961). In exploring the guarantee of the fourth amendment, the Supreme Court said it applies "to all invasions on the part of the government and its employés of the sanctity of a man's home and the privacies of life." Boyd v. United States, 116 U.S. 616, 630 (1886).

[12] *E.g.*, Johnson v. United States, 333 U.S. 10, 17 (1948); People v. Cahan, 44 Cal. 2d 434, 438, 282 P.2d 905, 907 (1955).

[13] Mapp v. Ohio, 367 U.S. 643 (1961).

[14] There were no grounds indicating probable cause in "Operation Weekend." Fifty-five per cent of the cases chosen were picked from the welfare case file at random,

be drawn "by a neutral and detached magistrate."[15] Searches of private dwellings without a warrant[16] and general searches with or without a warrant are unreasonable.[17] The courts have consistently held such searches to be violative of the fourth amendment's fundamental protection.[18] Therefore, as a general rule, in order for a search to be reasonable, *i.e.* constitutional, the requirement of a search warrant must be satisfied.

Exceptions to the General Rule

There are several exceptions to the requirement of a search warrant. First, under the *Frank* doctrine it has been held that a warrant is not necessary where an administrative agency conducts a search of a private dwelling pursuant to a city ordinance.[19] Second, there are a number of well-defined exceptions that have developed in the area of criminal law. These include a search incident to a lawful arrest,[20] a search necessitated by an emergency,[21] and a search pursuant to the home owner's consent.[22] Since no warrant was issued, or even requested, in "Operation Weekend" it is necessary to consider the mass welfare search in the light of these exceptions.

Searches Under the Frank Doctrine

Generally, a search conducted by an administrative agency that qualifies under the *Frank* doctrine is based upon a city health or building ordinance which re-

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and the other forty-five per cent listed as "suspect" cases were chosen on the basis that their eligibility had not been redetermined in the last six months or on the recommendation of the case worker. Parrish v. Civil Serv. Comm'n, 242 A.C.A. 665, 667-68, 51 Cal. Rptr. 589, 591 (1966).

[15] The reason that a magistrate must make the decision as to whether the privacy of a citizen's home will be invaded is that an officer might not objectively determine the matter because he is "engaged in the often competitive enterprise of ferreting out crime." Johnson v. United States, 333 U.S. 10, 14 (1948).

[16] Agnello v. United States, 269 U.S. 20, 32 (1925).

[17] Stanford v. Texas, 379 U.S. 476, 485 (1965).

[18] *E.g.*, Stanford v. Texas, 379 U.S. 476, 485 (1965); United States v. Lefkowitz, 285 U.S. 452, 456 (1932); Marron v. United States, 275 U.S. 192, 195 (1927); United States v. Kidd, 153 F. Supp. 605, 609 (W.D. La. 1957); United States v. Rembert, 284 Fed. 996, 1006 (S.D. Tex. 1922).

In Go-Bart Importing Co. v. United States, 282 U.S. 344, 357 (1931), the Court said of the fourth amendment, "it emphasizes the purpose to protect against all general searches. Since before the creation of our government, such searches have been deemed obnoxious to fundamental principles of liberty. They are denounced in the constitutions or statutes of every State in the Union."

[19] Ohio *ex rel.* Eaton v. Price, 364 U.S. 263 (1960) (building ordinance); Frank v. Maryland, 359 U.S. 360 (1959) (health ordinance); District of Columbia v. Little, 178 F.2d 13 (D.C. Cir. 1949), *aff'd on other grounds*, 339 U.S. 1 (1950) (health ordinance); Camara v. Municipal Court, 237 Cal. App. 2d 128, 46 Cal. Rptr. 585 (1965), *prob. juris. noted*, 87 Sup. Ct. 31 (1966) (housing code); People v. Laverne, 14 N.Y.2d 304, 200 N.E.2d 441 (1964) (building ordinance); City of Seattle v. See, 67 Wash. 465, 408 P.2d 262 (1965) (fire ordinance).

[20] Pennsylvania v. Maroney, 348 F.2d 22, 32 (3d Cir. 1965), *cert. denied*, 384 U.S. 1019 (1966); District of Columbia v. Little, 178 F.2d 13 (D.C. Cir. 1949), *aff'd on other grounds*, 339 U.S. 1 (1950).

[21] Agnello v. United States, 269 U.S. 20, 30 (1925).

[22] Nelson v. Hancock, 239 F. Supp. 857, 869 (D.N.H. 1965).

quires one to submit to inspection of his dwelling without the prior issuance of a search warrant.[23] Refusal to submit may result in a fine and/or imprisonment. The main constitutional issue involved in these cases has been whether the fourth amendment applies and a search warrant is, therefore, required.

The question was first presented in *District of Columbia v. Little*,[24] where an ordinance provided that a health inspector may enter dwellings without a search warrant. Little refused entry and was convicted under the ordinance. The District Court of Appeals for the District of Columbia declared the search unreasonable, holding that the fourth amendment prohibited warrantless searches regardless of the *officer or his mission*.[25] Judge Prettyman argued that, "to say that a man suspected of a crime has a right to protection against search of his home without a warrant, but that a man not suspected of crime has no such protection, is a fantastic absurdity."[26]

This reasoning, however, was not adopted by the majority of the United States Supreme Court when it faced the same issue ten years later in *Frank v. Maryland*.[27] Instead, the Court held that a city health ordinance which provided that a health inspector may search a dwelling without a warrant was constitutional. The decision was based on the preservation of minimum health standards and the general welfare of the community. But the Court noted that the ordinance allowed this type of search only where it was suspected that minimum standards were not being met.[28]

The following year, the Court in *Ohio ex rel. Eaton v. Price*[29] upheld a provision of a city building code allowing entry without a warrant. The code was upheld on essentially the same grounds as the majority opinion in *Frank*. The four dissenters argued that the fourth amendment secured the individual householder's right to refuse to open his door to an official who had not previously obtained a search warrant,[30] and thus protected the citizen's right to be free from all arbitrary governmental invasion into his dwelling. There have been only a few state cases involving this issue, and most have followed the *Frank* and *Price* decisions.[31] However, many writers have criticized this view.[32]

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[23] Cases cited note 19 *supra*.

[24] 178 F.2d 13 (D.C. Cir. 1949), *aff'd on other grounds*, 339 U.S. 1 (1950).

[25] *Id.* at 17.

[26] *Ibid.*

[27] 359 U.S. 360 (1959).

[28] *Id.* at 368. The decision was five to four with a vigorous dissenting opinion by Justice Douglas, in which he argued that the fourth amendment was "designed to protect the citizen against uncontrolled invasion of his privacy," and the "mere say so of an official" is not enough to avoid the requirement of a search warrant. *Id.* at 381, 384.

[29] 364 U.S. 263 (1960) (affirmed by tie vote).

[30] *Id.* at 273.

[31] *E.g.*, Camara v. Municipal Court, 237 Cal. App. 2d 128, 46 Cal. Rptr. 585 (1965); *accord*, City of Seattle v. See, 67 Wash. 465, 408 P.2d 262 (1965) (inspection of a business establishment, not a dwelling). *But see* People v. Laverne, 14 N.Y. 2d 304, 200 N.E.2d 441 (1964). In this case the court held that where a criminal prosecution was based on a warrantless administrative search the evidence obtained was inadmissible and the search was unlawful.

[32] See generally Waters, *Rights of Entry in Administrative Officers*, 27 U. CHI. L. REV. 525 (1959-60); Comment, *Administrative Inspections and the Fourth Amend-*

A comparison of "Operation Weekend" with the cases under the *Frank* doctrine reveals many distinguishing features. "Operation Weekend" was undertaken pursuant to a broad provision of the California Welfare and Institutions Code[33] which vests in the county complete discretion for the redetermination of the welfare recipient's eligibility. The searches under the *Frank* doctrine were all undertaken pursuant to city health, fire, or building ordinances which specifically permitted entry without a warrant.[34] The main purpose of "Operation Weekend" was the detection of welfare fraud;[35] while the main purpose of the searches under the *Frank* doctrine, in general, was to safeguard the health, safety, and general welfare of the community. Unlike the searches under the *Frank* doctrine, the mass welfare search was not an isolated invasion of one home.[36] Moreover, it was conducted at an unreasonable time,[37] whereas each search under the *Frank* doctrine was conducted on a weekday at a reasonable hour. Even the majority in *Frank* justified its decision by observing that there "was no midnight knock on the door, but an orderly visit in the middle of the afternoon with no suggestion that the hour was inconvenient."[38]

It seems doubtful that the mass welfare search could qualify as a search within the *Frank* doctrine.[39] As it is difficult to characterize this search as a *routine* visit to redetermine welfare eligibility, *i.e.* as an exception to the fourth amendment requirement of a search warrant under the *Frank* doctrine, the mass welfare search must be analyzed in terms of the other exceptions that have developed in the field of criminal law.

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ment—A Rationale, 65 COLUM. L. REV. 288 (1965); Comment, *State Health Inspections and Unreasonable Search: The 'Frank' Exclusion of Civil Searches*, 44 MINN. L. REV. 513 (1959-60); Comment, *Administrative Searches and the Fourth Amendment*, 30 MO. L. REV. 612 (1965); 50 CORNELL L.Q. 282 (1965); 33 FORDHAM L. REV. 297 (1964); 10 HASTINGS L.J. 430 (1959); 7 HOW. L.J. 80 (1961); 34 TUL. L. REV. 202 (1959-60); 27 U. CHI. L. REV. 79 (1959-60); 41 WASH. L. REV. 525 (1966).

[33] Cal. Stat. 1953, ch. 275, at 1427. This statute at the time of *Parrish* provided: "The county is responsible for the eligibility of all recipients of aid under this chapter and shall as often as necessary redetermine eligibility of all recipients to receive aid." For the present codification of this section see CAL. WELFARE & INST'NS CODE §§ 11454, 11476.

[34] An example of an ordinance which permits entry without a warrant, which was the basis for the administrative search in the *Camara* case, is SAN FRANCISCO, CAL., MUNICIPAL CODE § 503: "Authorized employees of the City departments or City agencies, so far as may be necessary for the performance of their duties, shall, upon presentation of proper credentials, have the right to enter, at reasonable times, any building, structure or premises in the City to perform any duty imposed upon them by the Municipal Code."

[35] Parrish v. Civil Serv. Comm'n, 242 A.C.A. 665, 669, 51 Cal. Rptr. 589, 592 (1966).

[36] Alameda County Welfare Dep't, *supra* note 1.

[37] In "Operation Weekend" the search was conducted between 6:30 a.m. and 10:30 a.m. on a Sunday. 242 A.C.A. at 667, 51 Cal. Rptr. at 591.

[38] 359 U.S. at 366.

[39] See Reich, *Midnight Welfare Searches and the Social Security Act*, 72 YALE L.J. 1347, 1350-53 (1963).

Exceptions in the Field of Criminal Law

There are three generally recognized exceptions to the requirement of a search warrant which have developed in regard to searches in the field of criminal law. One such exception concerns a search incident to a lawful arrest.[40] A second exception dispenses with the requirement of a search warrant where an emergency situation arises, *i.e.* where the search and seizure are necessary to prevent the escape of a criminal or the destruction of evidence.[41]

The third exception, and one through which the mass welfare search most convincingly seeks justification, is the consent to a warrantless search.[42] Consent amounts to a voluntary waiver of the constitutional right to demand that a search warrant be issued before entrance to the home is permitted. There has been general agreement that consent is a question of fact to be determined in light of all the surrounding circumstances.[43] Recently, the United States Supreme Court has established that waiver of constitutional rights cannot be assumed,[44] and waiver in this context means the knowing and intelligent relinquishment of a right or privilege.[45]

In order to find a valid waiver, consent to a warrantless search must be voluntarily,[46] unequivocally and intelligently[47] given. Consent is not valid if given through physical or moral submission to an express or implied assertion of authority.[48] Furthermore, the burden of proving a valid consent is on the party claiming that consent was given,[49] and the party who was searched need not prove lack of consent.

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[40] Pennsylvania v. Maroney, 348 F.2d 22, 32 (3d Cir. 1965), *cert. denied*, 384 U.S. 1019 (1966); District of Columbia v. Little, 178 F.2d 13 (D.C. Cir. 1949), *aff'd on other grounds*, 339 U.S. 1 (1950). For a discussion of searches incident to arrest see Note, 17 BAYLOR L. REV. 312 (1965).

[41] Agnello v. United States, 269 U.S. 20, 30 (1925).

[42] Nelson v. Hancock, 239 F. Supp. 857, 869 (D.N.H. 1965).

[43] See, *e.g.*, People v. Burke, 47 Cal. 2d 45, 301 P.2d 241 (1956); People v. Michael, 45 Cal. 2d 751, 290 P.2d 852 (1955); People v. Murillo, 241 A.C.A. 227, 50 Cal. Rptr. 290 (1966); People v. McGhee, 196 Cal. App. 2d 458, 16 Cal. Rptr. 625 (1961); People v. Sanchez, 191 Cal. App. 2d 783, 12 Cal. Rptr. 906 (1961); People v. Hood, 149 Cal. App. 2d 836, 309 P.2d 135 (1957); People v. Smith, 141 Cal. App. 2d 399, 296 P.2d 913 (1956).

[44] Miranda v. Arizona, 384 U.S. 436, 498-99 (1966).

[45] *Id.* at 492.

[46] Canida v. United States, 250 F.2d 822, 825 (5th Cir. 1958); Talavera v. State, 186 So. 2d 811, 814 (Fla. 1966).

[47] Judd v. United States, 190 F.2d 649, 651 (D.C. Cir. 1951).

[48] Johnson v. United States, 333 U.S. 10, 13 (1948); Amos v. United States, 255 U.S. 313, 317 (1921); Canida v. United States, 250 F.2d 822, 825 (5th Cir. 1958); Honig v. United States, 208 F.2d 916, 919 (8th Cir. 1953); United States v. Reckis, 119 F. Supp. 687, 690 (D. Mass. 1954); United States v. Rembert, 284 Fed. 996, 998 (S.D. Tex. 1922).

[49] Judd v. United States, 190 F.2d 649, 651 (D.C. Cir. 1951); Nelson v. Hancock, 239 F. Supp. 857, 869 (D.N.H. 1965); United States v. Reckis, 119 F. Supp. 687, 691 (D. Mass. 1954); Badillo v. Superior Court, 46 Cal. 2d 269, 272, 294 P.2d 23, 25 (1956); People v. Gorg, 45 Cal. 2d 776, 782, 291 P.2d 469, 472 (1955).

There have been many cases where an officer knocked at the door of a dwelling, without a warrant, and asked permission to search. The owner has then admitted him by stepping back,[50] saying, "go ahead and search"[51] or "go ahead and look around,"[52] or "help yourselves."[53] Many courts have held that this type of reaction is not a valid indication of voluntary waiver, but rather is a peaceful submission to authority.[54]

The result is clear when the facts of "Operation Weekend" are applied to these exceptions to the requirement of a search warrant. First, it should be noted that as no warrant was issued to search any welfare recipient's home, the search was prima facie unreasonable.[55] Second, the mass welfare search was not conducted as incident to a lawful arrest. Finally, this search was not in response to an emergency; on the contrary, it was several weeks in the planning[56] and was not contingent on an immediate crisis where time and opportunity prevented application to a magistrate.[57] Therefore, the warrantless search in "Operation Weekend" must seek justification within the doctrine of consent.

The United States Supreme Court has strongly maintained that consent, as a question of fact, may not be assumed.[58] There must also be convincing evidence to support a finding of consent,[59] and thus waiver of the right to refuse to submit to a search without prior issuance of a search warrant.

On examination of the facts and circumstances surrounding "Operation Weekend" and other mass welfare searches, it is difficult to accept the idea that one hundred per cent of the ANC recipients unequivocally, intelligently, and voluntarily waived their constitutional rights. Out of 86,000 ANC mothers in California one-third have eighth grade educations or less, one-third have only partially

[50] People v. White, 231 Cal. App. 2d 82, 87, 41 Cal. Rptr. 604, 607 (1964).

[51] Pritchett v. State, 78 Okla. Crim. 67, 143 P.2d 622, 623 (1943).

[52] Dukes v. United States, 275 Fed. 142, 144 (4th Cir. 1921).

[53] People v. Reid, 315 Ill. 597, 598, 146 N.E. 504, 505 (1925).

[54] *E.g.*, Dukes v. United States, 275 Fed. 142 (4th Cir. 1921); Nelson v. Hancock, 239 F. Supp. 857, 869 (D.N.H. 1965); United States v. Reckis, 119 F. Supp. 687, 691 (D. Mass. 1954); United States v. Hoffenberg, 24 F. Supp. 989, 991 (E.D.N.Y. 1938); People v. White, 231 Cal. App. 2d 82, 41 Cal. Rptr. 604 (1964); Talavera v. State, 186 So. 2d 811, 814 (Fla. 1966); Pritchett v. State, 78 Okla. Crim. 67, 143 P.2d 622 (1943); People v. Reid, 315 Ill. 597, 600, 146 N.E. 504, 505 (1925); Meno v. State, 197 Ind. 16, 24, 164 N.E. 93, 96 (1925). *Contra*, People v. McLean, 56 Cal. 2d 660, 16 Cal. Rptr. 347, 365 P.2d 403 (1961); People v. Burke, 47 Cal. 2d 45, 301 P.2d 241 (1956); People v. McGhee, 196 Cal. App. 2d 458, 16 Cal. Rptr. 625 (1961).

[55] People v. Haven, 59 Cal. 2d 713, 31 Cal. Rptr. 47, 381 P.2d 927 (1963); see Chapman v. United States, 365 U.S. 610 (1961).

[56] On November 20, 1962 a resolution was adopted to conduct "Operation Weekend" and it was carried out January 13, 1963. Parrish v. Civil Serv. Comm'n, 242 A.C.A. 665, 667, 51 Cal. Rptr. 589, 591 (1966), *appeal argued*, SF 22429, Cal. Sup. Ct., Dec. 5, 1966.

[57] District of Columbia v. Little, 178 F.2d 13, 17 (D.C. Cir. 1949), *aff'd on other grounds*, 339 U.S. 1 (1950).

[58] Miranda v. Arizona, 384 U.S. 436, 475 (1966); Carnley v. Cochran, 369 U.S. 506, 516 (1962).

[59] *E.g.*, Miranda v. Arizona, 384 U.S. 436, 475 (1966); Nueslein v. District of Columbia, 115 F.2d 690, 694 (D.C. Cir. 1940).

completed high school, and only twenty-one per cent have been graduated from high school.[60] Their average age is thirty-three, and they are employed in the least remunerative occupations, if they are employed at all.[61] They have virtually no personal property and only slightly over one per cent own any real property.[62] Most are burdened with abnormal family situations, live in extreme poverty and are dependent completely on public assistance.[63] Professor tenBroek has poignantly described how unlikely it is for the ANC recipient effectively to give her consent under the circumstances of the mass welfare search:

> Investigators ringing the doorbell in the middle of the night and identifying themselves as officials . . . especially, if they are caseworkers known to the recipient from past contacts in connection with welfare . . . represent authority to the recipient, authority whose mere presence constitutes coercion to some degree and whose request to enter, however politely phrased, is in the nature of an order. Even more important, the readily available means by which authority may be exerted is sharp in her mind. She is almost certain to feel that refusal to consent will bear adversely on her aid grant and thus deprive her and her children of their only source of support. . . . She knows that among other things she must submit to home visits by her worker.[64]

The question arose in planning "Operation Weekend" whether refusal of entry would automatically be grounds for the discontinuance of aid, as it had been in past investigations.[65] The welfare workers were instructed "that if admission was not granted, benefits would not automatically be discontinued but the *reason for denying admission would subsequently be investigated.*"[66] However, as it was unlikely that the recipient was aware of these instructions, one might reasonably conclude that she merely submitted to the authority represented by the case worker.

It is doubtful, therefore, that under these facts and circumstances consent was obtained. Consequently, the welfare search cannot be justified as within any of these three recognized exceptions to the requirement of a search warrant.

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[60] Cal. Dep't Social Welfare, Characteristics of Recipients of Aid to Needy Children, Research Series Report No. 20, July 1963.

[61] *Ibid.*

[62] *Ibid.*

[63] tenBroek, *California's Dual System of Family Law: Its Origin, Development, and Present Status*, 17 STAN. L. REV. 614, 670 (1965).

[64] *Id.* at 669-70. On the issue of the welfare recipient's consent to extraordinary searches of his dwelling, basic questions arise on the theory of social welfare. By his acceptance of public assistance does the welfare recipient impliedly consent to the imposition of extraordinary investigations to redetermine his welfare eligibility? Does he waive thereby some degree of the fourth amendment's protections? Or might one say that within the context of our affluent society there is a duty on the part of the state to provide public assistance to those who are unable to provide for themselves? Therefore, the state may impose no conditions, and no waiver of fourth amendment protections may be implied, upon the acceptance of public assistance by those otherwise determined to be eligible. See Reich, *supra* note 39 at 1349-50, 1359-60.

[65] 242 A.C.A. at 668, 51 Cal. Rptr. at 592.

[66] *Ibid.* (Emphasis added.)

Conclusion

The mass welfare search does not qualify as an exception to the requirement of a search warrant under the *Frank* doctrine.[67] Therefore, a search warrant is a necessary prerequisite to this type of search unless one of the exceptions which have developed in the field of criminal law is applicable. The warrantless searches conducted in "Operation Weekend" did not come within any of these recognized exceptions to the formal requirement of a search warrant. Thus, these searches were violative of the fourth amendment rights of ANC recipients.

In addition, the mass welfare search has not been officially endorsed by the federal and state welfare agencies.[68] It has been condemned by these agencies in recommended guidelines which attempt to assure that the fourth amendment rights of welfare recipients be respected by the county welfare agencies.[69] Nevertheless, these searches have continued.[70] An effective remedy might be supplied by judicial determination that the mass welfare search is unreasonable and in violation of the fourth amendment rights of those receiving public assistance.

*Peter J. Laird**

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[67] It seems doubtful that the *Frank* doctrine will be extended. Decisions since the *Frank* case seem to indicate that the Court is moving towards a broader, rather than a more limited, interpretation of the fourth amendment's protection of the individual's right to privacy. Reich, *supra* note 39, at 1351. See Griswold v. Connecticut, 381 U.S. 479 (1964); Mapp v. Ohio, 367 U.S. 643 (1961); Silverman v. United States, 365 U.S. 505 (1961).

[68] U.S. BUREAU OF PUBLIC ASSISTANCE, PUBLIC ASSISTANCE ADMINISTRATION, pt. IV, § 2600 (1965); Cal. Dep't Social Welfare, Dep't Bulletin No. 624, August 5, 1963.

[69] The Cal. Dep't of Social Welfare made the following criticism of mass welfare searches: "Mass, indiscriminate or dragnet home visits are not to be used either for the purpose of fraud detection or for the purpose of deterring fraud. They are not to be used as a method of testing the accuracy of eligibility decisions." Cal. Dep't Social Welfare, *supra* note 68, at 5.

[70] The Cal. Dep't of Social Welfare in a recent review of the Alameda County Welfare Dep't noted: "The agency's welfare investigators are searching the recipient's home for evidence of fraud. Even though these searches are presumedly done with the permission of the recipient, this is not a proper activity for the welfare department and is a violation of Department Bulletin 624." Cal. Dep't Social Welfare, Administrative Review Bureau, Administrative Review of Alameda County Welfare Dep't, July 1965, p. 32.

* Member, Second Year Class.